

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

<p>KIRA WAHLSTROM,</p> <p>Plaintiff,</p> <p>-against-</p> <p>DAVID J. HOEY, LAW OFFICES OF DAVID J. HOEY, P.C., DON C. KEENAN, D.C. KEENAN & ASSOCIATES, P.C. D/B/A THE KEENAN LAW FIRM, P.C., AND KEENAN’S KIDS FOUNDATION, INC.</p> <p>Defendants</p>	<p>Civil Case No. 1:22-cv-10792-RGS</p>
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**PLAINTIFF’S MOTION FOR LEAVE TO SERVE WRITTEN QUESTIONS ON
DEFENDANT KEENAN AND AMEND SCHEDULING ORDER DEADLINES**

Plaintiff Kira Wahlstrom, with the assent of Christine Knipper, counsel for Defendants David J. Hoey and Law Offices of David J. Hoey, P.C. and of John Bowler, on behalf of Don C. Keenan, D.C. Keenan and Associates P.C. d/b/a The Keenan Law Firm P.C. and Keenan’s Kids Foundation, Inc., moves for leave to serve written questions on Defendant Keenan in lieu of taking his deposition and amend later scheduling order deadlines on the following grounds:

1. On March 29, 2023, the Court ordered (at Dkt. No. 69):

Other than defendant Don Keenan's deposition, all fact discovery must be completed by March 31, 2023. The court will permit the taking of Keenan's videoconference deposition up to and including April 28, 2023. If Keenan seeks a further continuation, he must file, within three days of cancelling, a motion including sealed medical affidavit and records in support.

Accordingly, the remaining pretrial conference is altered in that the parties' expert reports are due by May 29, 2023, and expert discovery closes June 30, 2023. Any Daubert motions are to be filed by July 21, 2023, and dispositive motions are due 30 days following resolution of Daubert motions, with oppositions 21 days thereafter, and reply only with leave of court. If no Daubert motions are filed, dispositive motions are due by August 7, 2023, and Opposition by August 28, 2023.

2. On April 28, 2023, Keenan filed a motion to continue his deposition based on health reasons that were filed under seal. (Dkt. No. 75)

3. On May 3, 2023, the Court ruled:

The court denies defendants' [75] motion to continue the deposition of Don Keenan and amend scheduling order deadlines without prejudice. Defendants may refile their request with an affidavit from Keenan's treating cardiologist or the provider who will perform the procedures listed therein. Further, given that Keenan was originally scheduled to take his deposition in February of 2023 and has previously given an extension for the same reason, the court requests that any further request to continue include an estimate of when Keenan will be able to do so. The court is also amenable to requests for time limits and other conditions to minimize any harm to Keenan's health.

Any proposed revisions to the schedule may be considered upon such further request.

4. Undersigned counsel for Plaintiff thereafter conferred with John Bowler, counsel for Don Keenan and the Keenan's Kids Foundation, on options for taking Mr. Keenan's deposition in consideration of his health and reached the following agreement and now seek Court approval.

5. The parties propose the following schedule:

- a. Plaintiff will serve a narrow set of written questions (12 questions or less) on Mr. Keenan by Friday, May 12, 2023.
- b. Mr. Keenan will provide written answers by May 22, 2023. The written answers will be sworn under oath along with certifying that Mr. Keenan is of sound mind and memory to certify the truth and accuracy of the written responses under oath and that he has taken no medication that would impair his memory.
- c. Plaintiff reserves the right to seek to ask follow-up questions to the written questions served, but only if counsel feels the genuine need for cross-examination as to the questions asked but not beyond those questions, in advance of trial.
- d. The parties seek to extend the remaining scheduling order deadlines as follows:

- 1) Expert report deadline will be extended to June 12, 2023.
- 2) Expert discovery deposition deadline will be extended to July 14, 2023.
- 3) Daubert motions to be filed by July 31, 2023.
- 4) Dispositive Motions by August 14, 2023 and Oppositions by September 4, 2023.

6. The parties believe this proposal meets the needs of Plaintiff and Mr. Keenan and avoids further significant delay of advancing this case to a resolution and thus move for the above extension of deadlines.

Dated: May 11, 2023

Respectfully submitted,

/s/ Bridget A. Zerner

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2023 this document was served by electronic delivery through the CM/ECF system on the registered participants as identified on the Notice of Electronic Filing, which will forward copies to Counsel of Record.

/s/ Bridget A. Zerner

Bridget A. Zerner